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Written Testimony

Senate Hearing to examine whether the current continuum of care is meeting the needs of survivors of gender-based and domestic violence with pertinent services agencies, advocates and service providers.

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Thank you for the opportunity to submit written testimony for the above hearing. The Center for Elder Law & Justice (“CELJ”) is an 80-person full service regional civil legal services delivery structure with dedicated staff for outreach, training, and pro bono activities. Our work includes both policy advocacy and individual direct legal services and we have units dedicated to health care, housing, kinship care, public benefits, *elder abuse* & consumer scams, and more. Our mission is to use the legal system to ensure that our clients live independently and with dignity.

Incorporated in 1978, in Erie County New York, we now provide outreach and brief services to all counties in the Fourth Department, full-service representation to 11 Western New York Counties and run a statewide telephone helpline for older adults and their families. A large portion of our advocacy includes assisting older victims of crime, such as individuals who have experienced physical, emotional or financial abuse and neglect, as well as victims of scams.

CELJ is also part of the New York Legal Services Coalition, (NYLSC) a 501(c)3 nonprofit organization formed in 2014 that consists of approximately 45 civil legal services

organizations serving every county in New York State. Member organizations provide a full range of legal advocacy and assistance to address the needs of persons eligible for legal assistance in non-criminal matters and conflicts, such as domestic violence, tenants' rights, immigration, elder law, and a host of other areas. Member agencies ensure access to civil legal assistance for all New Yorkers in need, with a commitment to social justice and equal opportunity for all.

Funding Crisis Across New York for Victim Services Providers

NYLSC has joined forces with the New York State Coalition against Domestic Violence (NYSCAD) due to our shared concern about the future of services to victims of crime, in light of the reduced funding from the NY Office of Crime Victims, which, in turn, is financed by the federal Crime Victims Fund (CVF) through the Victims of Crime Act (VOCA). Every state in the nation relies on VOCA funding and New York is no different. Every year, tens of thousands of New Yorkers rely on these services to enhance their safety, receive legal assistance, recover from trauma, find housing and employment, and obtain justice from the court system.

Most crime victims programs, including programs for domestic violence, elder abuse and shelters, rely upon an appropriation to the states from the Crime Victims Fund (CVF), which is funded by monetary penalties associated with federal criminal convictions. However, funding that came through deposits made into the CVF had decreased dramatically, leading to a massive shortfall due to the use of deferred prosecution and non-prosecution agreements by federal prosecutors. Although this structural challenge was remedied in 2021, due to national advocacy by domestic violence programs, with the passage the *VOCA Fix to Sustain the Crime Victims Fund Act of 2021* ("VOCA Fix"), it has not generated sufficient funding to resolve the CVF's historically low balance. New York's VOCA grant has declined \$121.6 million, or 61%, in the

last five years. As a result, New York’s domestic violence and legal services programs have had significant cuts to their programming and have been told that the NY Office of Victim Services might not be able to honor the last year of our three-year contracts.

Elder Domestic Violence is Growing

The population of older adults in the United States is growing at a rapid pace, and it is estimated that by 2050, the population of people aged 65 and older will almost double to 83.7 million.¹ According to the NYS Department of Health Master Plan on Aging, New York ranks fourth in the nation in the number of individuals aged 60 and over, at 4.6 million. By 2030, this population is expected to reach 5.3 million. Also, by 2030, over 51 counties will have a population with 25% of individuals being aged 60 and older.

As our population of older adults grows, so too does the number of older Americans who are vulnerable to elder domestic violence, also referred to as elder abuse. The National Institute of Justice has defined elder abuse as “intentional actions that cause harm or create a serious risk of harm to a vulnerable elder by a caregiver or other person who stands in a trust relationship to the elder, or failure by a caregiver to satisfy the elder’s basic needs or to protect the elder from harm.”² Elder abuse includes physical, emotional, and sexual abuse, as well as financial exploitation, neglect, and abandonment, and perpetrators may include family members or caregivers in home or facility settings.³ In almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. Two thirds of perpetrators are adult children or spouses.⁴

¹ United States Census Bureau, 2014.

² Bonnie, R.J., Wallace, R.B., eds. (2003). Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America, 39. Elder Abuse, National Institute of Justice, Office of Justice Programs. Available at <https://www.nij.gov/topics/crime/elder-abuse/Pages/welcome.aspx>.

³ National Council on Aging, Elder Abuse Facts, 2019. Available at <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>.

⁴ National Council on Aging, Elder Abuse Facts, 2019. Available at <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>.

A 2010 National Institute of Justice study estimates that approximately 1 in 10 Americans aged 60 and over have been victims of some form of elder abuse, and 1 in 20, or 5% of older adults have been financially exploited by a family member.⁵ Additionally, polyvictimization, or the experience of more than one type of elder abuse, is common among survivors.⁶ As troubling as these numbers are, they likely fail to tell the whole story, given that studies estimate that only 1 in 24 cases of elder abuse is ever reported, and the frequency of reporting elder financial exploitation is even lower, with an estimated 1 in 44 cases being reported.⁷

The consequences of elder abuse are possibly even more troubling than are the incidence rates. Victims of elder abuse are three times more likely to be hospitalized, have an increased use of emergency rooms, and have a significantly higher mortality rate.⁸ They are also more likely to rely on government programs due to financial losses, but may actually be denied such assistance due the financial exploitation itself.⁹ Moreover, survivors of abuse are more likely to need legal

⁵ Acierno, R., Hernandez, M.A., Amstadter, A.B., Resnick, H.S., Steve, K., Muzzy, W., and Kilpatrick, D.G. (2010). Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health*, 100(2), 292-297. Available at www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623.

⁶ Quinn, K., Heisler, C., and Ramsey-Klawnsnik, H. (2014). "Polyvictimization in Later Life." Available at <http://www.napsa-now.org/wp-content/uploads/2014/11/306-Poluvictimization-in-Later-Life.pdf>.

⁷ National Adult Protection Services Association, "Elder Financial Exploitation." Available at <http://www.napsa-now.org/policy-advocacy/exploitation/>.

⁸ Dong, E.Q., & Simon, M.A. (2013). Elder abuse as a risk factor for hospitalization in older persons. *JAMA Internal Medicine*, 173(10), 911-917. Doi: 10.1001/jamainternmed.2013.238; and Lachs, M.S., Williams, C.S., O'Brien, S., Hurst, L., Kossack, A., Siegal, A., & Tinetti, M.S. (1997). ED use by older victims of family violence. *Annals of Emergency Medicine*, 30(4), 448-454 doi: [http://dx.doi.org/10.1016/S0196-0644\(97\)70003-9](http://dx.doi.org/10.1016/S0196-0644(97)70003-9); Baker, M.W., LaCroix, A.Z., Wu, C.Y., Cochran, B.B., Wallace, R., & Woods, N.F. (2009). Mortality risk associated with physical and verbal abuse in women aged 50 to 79. *Journal of the American Geriatrics Society*, 57(10), 1799-1809. Doi: 10.1111/j.1532-5415.2009.02429.x

⁹ National Adult Protective Services Association, Elder Financial Exploitation. Nearly one in ten financial abuse victims will turn to Medicaid as a direct result of their own monies being stolen from them. Available at <http://www.napsa-now.org/policy-advocacy/exploitation/>. Goldberg, J., (2017). Elder Financial Abuse and Medicaid Denials, Justice in Aging, National Center on Law & Elder Rights. Available at <https://ncler.acl.gov/pdf/Elder-Financial-Abuse-and-Medicaid-Denials.pdf>.

and social assistance, both to deal with the variety of legal issues that can stem from the underlying abuse, and to prevent further abuse from occurring in the future.

The crime of elder abuse is complex, both because the perpetrators are often family members or those in positions of trust, and because factors such as isolation, cognitive impairments, and disabilities of survivors can make identification and intervention difficult. This is particularly true of financial exploitation, believed to be the most prevalent and least reported form of elder abuse. Estimates of losses nationwide due to financial exploitation range from \$2.9 billion to \$36.5 billion annually. [66] Despite this, as Forbes summarized in a 2015 report, “Why Elder Financial Abuse is Such a Slippery Crime,” “many caregivers, family members, financial services employees and police officers aren’t trained in preventing, detecting or dealing with financial exploitation of the elderly. And there’s often a lack of coordination between agencies and professionals who have pieces of the puzzle,”¹⁰

Seniors face different barriers from younger individuals when navigating violence, such as medical issues and caregiver needs and, therefore, many of the existing services and protocols developed for domestic and/or sexual violence are inappropriate. CELJ has a team of social workers who try to address the barriers that contribute to a victim continuing to stay in an unsafe situation such as help accessing public benefits, housing, medical services, and counselling. As with all cases of family violence, it is critical to put the victim first and to understand that various cultural and religious concerns will impact when, how and if the victim asks for help. Moreover, historically marginalized groups such as the LGBTQ+ community, immigrants and communities

¹⁰ Eisenberg, R. Why Elder Financial Abuse is Such A Slippery Crime), Forbes (2015). Available at <https://www.forbes.com/sites/nextavenue/2015/02/13/why-elder-financial-abuse-is-such-a-slippery-crime/#22b264886f90>

of color are more hesitant to go to law enforcement and our staff are trained that not all victims can be approached in the same manner.

VOCA Funding of CELJ Programs

Funding through NY OVS through VOVA is CELJ's fourth largest funding source out of a revenue stream consisting of 40 funders within a budget of almost eight million dollars. Crime Victims funding is the single largest funder of all of our elder domestic violence programs. The legal work we perform includes obtaining orders of protection and temporary restraining orders, evicting abusers, developing a paper trail of abuse to present to the District Attorney's office, ensuring adequate health care supports are in place if the abuser was a caregiver, and suing in civil court to recover stolen funds. We do this work in all ten counties where we provide direct services.

In addition, these funds support our Enhanced Multi-Disciplinary Teams (E-MDT) to combat Elder Abuse through a contractual relationship with Lifespan of Rochester. EMDT's bring together groups to solve difficult and complex cases of elder abuse that can benefit from a team of professionals representing a variety of disciplines. By working together, partners such as legal services, law enforcement and adult protective services can avoid gaps in service and identify the best ways to assist victims of abuse. The approach is person-centered, and often yields better case outcomes, as well as ensuring holistic services to victims. The team includes a forensic accountant (to follow the money trail in financial crimes) and a geriatric psychiatrist (to assess the capacity of victims both at the time of the crime and at the time of trial). Lifespan is close to having teams in every county of New York State and, as a result, there have been substantial increases in the prosecution and prevention of elder abuse. However, unless New

York State is able to make up for the loss of VOCA funding, all those efforts of the last few years will be lost.

A common example of the complexities and dangers of elder domestic violence is the case of Mrs. X, 73 years old, who was referred to the Center for Elder Law & Justice by the Family Justice Center. Our client was subjected to multiple incidents of physical abuse by her nephew who had moved in with her, but she never felt that she could do anything about it, as he helped her remain in her home. About two years ago, he put his hands around her neck, picked her up by her neck, and slammed her to the kitchen floor, with the back of her head striking the floor. He then put his knee in her chest, applying pressure to keep her on the floor, and continued to strangle her, telling her he was going to kill her. She could not breathe and, when she tried to focus, the room was spinning, and there were black dots in her eyes. She lost consciousness; when she came to, he was in another room, but continued to taunt her and threaten her life. She ran to her landlord's home, and he drove her to the hospital. She reported the assault at the hospital to police. Although he has been physical with her in the past, the most recent incident was the worst and she thought she was going to die.

CELJ represented Mrs. X. through multiple court appearances in both family and Integrated Domestic Violence (IDV) court. However, he violated the temporary order of protection we obtained on her behalf, and again assaulted her until a neighbor called the police. We worked closely with the District Attorney to bring her abuser to justice, and he was ultimately sentenced to 20 years in prison and has a permanent order of protection against him, which will also remain in effect for 20 years. Due to our efforts, our client is finally living a life free from violence for the first time in years.

Conclusion

Legal services programs such as CELJ and the domestic violence programs we work on are already at a breaking point and unable to serve the needs of victims. Unless drastic action is taken by New York State to replace the lost federal VOCA funding over the next two years, hundreds of programs, already not operating at full capacity due to prior cuts, will close and clients like ours will have nowhere to go for help. We ask that New York State provide adequate funding in the FY 24-25 budget to enable OVS to fully honor year two and year three of the current contracts despite any shortfalls from OVS. The total amount of the contracts is \$125 million per year and the contracts run from 101-9/30. Therefore, the total amount of the appropriations would be \$62.2 million in FY 24 and 62. million in FY 25. In addition, we ask that OVS work with the advocates to ensure an adequately funded domestic violence and legal services network in the future which is not dependent upon fluctuations in the federal Victim Services Fund.